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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,127	04/05/2006	Roy Garvin	18880-002US1	2941

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EXAMINER

BASS, DIRK R

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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04/05/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/525,127	Applicant(s) GARVIN ET AL.	
	Examiner DIRK BASS	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response filed January 19, 2010 is acknowledged. Claims 1, 10, and 16 are amended and claim 20 is newly added. Claims 1-10 and 12-20 are pending and further considered on the merits.

Response to Amendment

In light of the amendment, the examiner modifies the grounds of rejection set forth in the office action dated September 18, 2009.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-10 and 12-19** are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Perlman, US 5225165 (Perlman).

3. Regarding claims 1 and 16, Perlman discloses a microtube (fig. 1-5) comprising;

- a. A container having an open end defining an opening for receiving materials to be contained (REF 15), and a closed end (bottom of REF 11), the open end having a perimeter wall (implicitly disclosed); and
- a. A lid adapted to make closing contact with the open end (REF 14), wherein the lid is provided with a flange extending outwardly and upwardly therefrom (REF 24), wherein the flange is positioned lateral to the perimeter wall when the lid makes closing contact with the open end (implicitly disclosed) and is arranged to move towards the closed end of the container upon application of a mechanical force to a surface of the flange so as to remove the closing contact, whereby the container is opened (col. 2, l. 30-39).

Regarding claims 2-3, Perlman discloses a microtube which is a microcentrifuge tube (col. 2, l. 20-25) suitable for holding relatively small volumes of material, wherein the relatively small volume of material is a volume up to 4 ml. It is implicit in Perlman that the claimed microcentrifuge tube is capable of holding volumes between .4 and 2

ml. as related to the general definition of a microcentrifuge tube given in the background of the invention (col. 1, l. 9-14).

Regarding claim 4, Perlman discloses a microtube which is a microcentrifuge tube (col. 2, l. 20-25).

Regarding claim 5, Perlman discloses a microtube wherein the lid is adapted to make a sealing contact with the opening of the container (col. 6, l. 7-14).

Regarding claim 6, Perlman discloses a microtube wherein the lid is connected to the container by a connecting means (see "lid hinge 16", fig. 1-5).

Regarding claim 7, Perlman discloses a microtube wherein the connecting means provides for relative movement between the lid/flange and the container (fig. 5).

Regarding claim 8, Perlman discloses a microtube wherein the connecting means is a hinge (see "lid hinge 16", fig. 1-5).

Regarding claim 9, Perlman discloses a microtube wherein the connecting means comprises a hinge which may be fixed to the upper perimeter wall of the container defining the opening and to the lower surface of the lid, and about which the lid/flange and container can move (see "lid hinge 16", fig. 5).

Regarding claim 10, Perlman discloses a microtube wherein the lid is adapted such that the flange extends outwardly from a position adjacent to or in axial alignment with the connection means (see "lid extension 24", fig. 5).

Regarding claims 12-13, Perlman discloses a microtube which is constructed of a plastics material wherein the plastics material is laboratory grade injection molded plastic (see "virgin polypropylene or polyethylene", col. 5, l. 67 – col. 6, l. 4).

Regarding claim 14, Perlman discloses a microtube wherein the lid and flange parts of the tube are made as an integral part of the container (fig. 5).

Regarding claim 15, Perlman discloses a microtube wherein the flange is adapted for use as a handle (see "lid extension", col. 3, l. 49-52).

Regarding claim 17, Perlman discloses a storage system/vessel comprising one or more microtubes (col. 4, l. 67 – col. 5, l. 9 and col. 5, l. 65-66).

Regarding claim 18, Perlman discloses a storage system wherein the storage system/vessel is a rack, a reaction vessel, or a centrifuge (col. 4, l. 67 – col. 5, l. 9 and col. 5, l. 65-66).

Regarding claim 19, Perlman discloses a method of using a microtube for the storage of material, as reaction vessels, or in centrifugation (col. 4, l. 67 – col. 5, l. 9 and col. 5, l. 65-66).

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claim 20** is rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman.

4. Regarding claim 20, Perlman discloses a microtube (fig. 1-5) comprising;

b. A container having an open end defining an opening for receiving materials to be contained (REF 15), and a closed end (bottom of REF 11), the open end having a perimeter wall (implicitly disclosed); and

b. A lid adapted to make closing contact with the open end (REF 14), wherein the lid is provided with a flange extending outwardly and upwardly therefrom (REF 24), wherein the flange is positioned lateral to the perimeter wall when the lid makes closing contact with the open end (implicitly disclosed) and is arranged to move towards the closed end of the container upon application of a mechanical force to a surface of the flange so as to remove the closing contact, whereby the container is opened (col. 2, l. 30-39).

2. Perlman fails to explicitly disclose a portion of the lid extends upwardly at an angle of about 90 degrees. However, at the time of invention, it would have been obvious to one having ordinary skill in the art to modify the flange of Perlman to be at an angle of 90 degrees since it is considered by the examiner to be a matter of obvious design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration was significant or produced unexpected results (MPEP 2144.04, Section IV, Part B).

Response to Arguments

4. Applicant's arguments filed January 19, 2010 have been fully considered but they are not persuasive.
5. Applicant's argue that Perlman fails to disclose a flange extending upwardly and positioned lateral to the perimeter wall. In response, the examiner directs applicant's attention to the 35 U.S.C. 102(b) rejection set forth above in which Perlman teaches a flange lateral to the perimeter wall, which extends outwardly and upwardly from the lid.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIRK BASS whose telephone number is (571) 270-7370. The examiner can normally be reached on Mon - Fri (9am-4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571) 272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DRB/
Dirk R. Bass

/Angela Ortiz/

Supervisory Patent Examiner, Art Unit 1797